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9
10 **UNITED STATES DISTRICT COURT**
11
12 **DISTRICT OF NEVADA**

13 GYPSUM RESOURCES, LLC, a Nevada
14 limited liability company;

CASE NO.: 2:19-cv-00850-GMN-EJY

15 Plaintiff,

16
17 **STIPULATION AND ORDER
MODIFYING REFERRAL TO
BANKRUPTCY COURT**

v.

18 CLARK COUNTY, a political subdivision of
19 the State of Nevada; and CLARK COUNTY
20 BOARD OF COMMISSIONERS,

21 Defendants.

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1 Plaintiff Gypsum Resources, LLC ("Gypsum") and Defendants Clark County and
 2 Clark County Board of Commissioners (collectively "Clark County"), by and through their
 3 undersigned counsel, hereby stipulate as follows:

4 1. On July 26, 2019, Plaintiff filed for bankruptcy protection under Chapter 11 of
 5 Title 11, Case No. 19-14799-mkn. *See* Docket No. 1 in Bankruptcy Case No. BK-S-19-14799-mkn
 6 (hereinafter "Bankruptcy Proceeding").

7 2. On November 7, 2019, following this Court's adoption in part of the Magistrate's
 8 Report and Recommendation, this Court entered an Order (ECF No. 28) that referred this matter
 9 "to the United States Bankruptcy Court for the District of Nevada, as part of case
 10 Number BK-S-14796" (the "Referral Order").

11 3. This case then proceeded as 19-01105-MKN (the "Bankruptcy Adversary").
 12 Bankruptcy Judge Michael Nakagawa has overseen the Bankruptcy Adversary, including
 13 discovery, since the referral. The Bankruptcy Court also entered a Discovery Plan and Scheduling
 14 Order, setting forth the discovery schedule and dispositive motions deadlines (the
 15 "Scheduling Order") (Ex. 1 hereto).

16 4. On July 16, 2021, Defendants filed a Motion (1) For Determination that the Claims
 17 at Issue Are Not Core Matters for Which the Bankruptcy Court may Issue Final Relief; (2) For
 18 Determination of Right to Jury Trial on Defendant's Counterclaim; and (3) To Return the Case to
 19 District Court for Final Adjudication (the "Motion"). (*See* Doc. No. 202.¹) Defendants asserted that
 20 the claims raised in this action are "non-core" over which the Bankruptcy Court may exercise only
 21 "related to" jurisdiction; that the Bankruptcy Court is not authorized to conduct jury trials without
 22 the express consent of all parties, which is not present; and that the Bankruptcy Court lacks
 23 jurisdiction to issue final orders in this case, such that judicial economy would best be served by
 24 returning the case to District Court for determination of dispositive motions and for trial. Gypsum
 25 filed its Opposition on August 4, 2021. (*See* Doc. No. 208.) Defendants filed their Reply on
 26 August 11, 2021. (*See* Doc. No. 210.)

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 28 ¹ "Doc. No." references refer to the documents filed in Case No. BK-S-19-14796-mkn.

1 5. The deadline for filing dispositive motions in the Bankruptcy Adversary was
2 September 20, 2021. Defendants have filed a Motion for Summary Judgment (Docket No. 242 in
3 the Bankruptcy Adversary) and Plaintiff has filed a Motion for Partial Summary Judgment
4 (Docket No. 247 in the Bankruptcy Adversary) (collectively, the "Summary Judgment Motions").

5 6. On September 21, 2021, the Bankruptcy Court issued its Order on Motion (1) For
6 Determination that the Claims at Issue Are Not Core Matters for Which the Bankruptcy Court may
7 Issue Final Relief; (2) For Determination of Right to Jury Trial on Defendant's Counterclaim; and
8 (3) To Return the Case to District Court for Final Adjudication. (*See* Doc. No. 254.)

9 7. In relevant part, the Bankruptcy Court "ordered and determined that the claims
10 alleged by Plaintiff and Defendants in the above-captioned proceedings are non-core matters within
11 the meaning of 28 U.S.C. § 157(b) and that consent to have the bankruptcy court enter a final
12 judgment on such claims has not been given." (*Id.* at 17.)

13 8. The Bankruptcy Court's Order stayed the Bankruptcy Adversary to permit the
14 Defendants to seek a determination of whether the Referral Order should be modified or withdrawn.
15 (*Id.* at 16.)

16 9. In light of the Bankruptcy Court's Order, which questions its authority to rule upon
17 motions for summary judgment, the Parties do not wish to create any debate about the
18 Bankruptcy Court's authority to resolve motions for summary judgment – which both sides have
19 filed in accordance with the Scheduling Order – so as to prolong this case.

20 10. The parties further stipulate to the following briefing schedule on their respective
21 motions for summary judgment: Oppositions shall be due on or before October 22, 2021. Replies
22 shall be due on or before November 22, 2021.

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1 11. In the interest of judicial economy and to avoid debates about the
2 Bankruptcy Court's authority to enter final judgment in the case, Plaintiff withdraws its opposition
3 to returning this case to the District Court for final adjudication, including motions for summary
4 judgment, and the Parties jointly stipulate to now withdraw the referral to Bankruptcy Court and
5 return this case to the District Court.

6 Respectfully submitted this 5th day of
7 October, 2021.

8 PISANELLI BICE PLLC

9 By: /s/ Todd L. Bice

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16 *Attorneys for Plaintiff*
17 *Gypsum Resources, LLC*

Respectfully submitted this 5th day of
October, 2021.

OLSON CANON GORMLEY & STOBERSKI

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Attorneys for Defendants

18 **IT IS SO ORDERED.**

19 **IS IS FURTHER ORDERED** that the parties shall file a copy of Defendants' Motion for
20 Summary Judgment and a copy of Plaintiff's Motion for Partial Summary Judgment on the
21 District Court's docket no later than October 15, 2021.

22 Dated this 7 day of October, 2021.

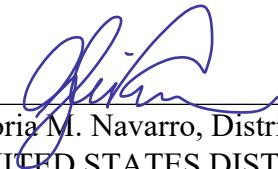
23 
24 Gloria M. Navarro, District Judge
25 UNITED STATES DISTRICT COURT

EXHIBIT 1

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10 Electronically Filed October 22, 2019

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 19 *Counsel for Gypsum Resources, LLC*

20 **UNITED STATES BANKRUPTCY COURT**

21 **DISTRICT OF NEVADA**

22 In re

23 Case No. BK-S-19-14796-mkn

24 GYPSUM RESOURCES MATERIALS,
 25 LLC,

26 Jointly Administered with
 27 Case No. BK-S-19-14799-mkn

28 Affects Gypsum Resources Materials, LLC
 29 Affects Gypsum Resources, LLC
 30 Affects all Debtors

GYPSUM RESOURCES, LLC, a Nevada limited
 liability company;

31 Chapter 11

32 Adversary Proceeding No. 19-01105-mkn

33 **STIPULATED DISCOVERY PLAN AND**

34 **[PROPOSED] SCHEDULING ORDER**

35 **[SPECIAL SCHEDULING REVIEW
 36 REQUESTED]**

37 Plaintiff,

38 vs.

39 CLARK COUNTY, a political subdivision of the
 40 State of Nevada; and CLARK COUNTY
 41 BOARD OF COMMISSIONERS,

42 Defendants.

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1. **Meetings.** Pursuant to Fed.R.Civ.P. 26(f), a meeting was held telephonically on October 15,
 2019 at 1:00 p.m. and was attended by:

3. Kevin Brogan for plaintiff

4. Tom Dillard for defendants

5. The parties note that they previously held a meeting concerning the stipulated discovery plan
 6. submitted to the District Court on September 24, 2019. The District Court denied the Stipulated
 7. Discovery Plan and [Proposed] Scheduling Order, docketed at ESF No. 24, due to the referral to the
 8. Bankruptcy Court.

9. **Pre-Discovery Disclosures.** The parties will exchange by October 23, 2019 the information
 10. required by Fed.R.Civ.P. 26(a)(1) and Local Rule 26-1.

11. **Discovery Plan**

12. X A discovery plan is needed or useful in this case.

13. X The parties cannot agree on a discovery plan and scheduling order. The attached sets forth
 14. the parties' disagreements and reasons for each party's position.

15. A. Plaintiff states discovery will be needed on the following subjects: the subject
 16. property, state legislation and prior attempt at acquisition of plaintiff's property, the settlement
 17. agreement resulting from litigation, plaintiff's attempts at obtaining development entitlements to
 18. develop the property, defendants' responses to the requests for entitlement, communications
 19. between and among the plaintiff and defendants, and, if liability is found, expert valuation evidence.

20. Defendants state that they object to discovery with respect to the formation and the terms and
 21. conditions of the prior settlement agreement as all such issues were waived under the settlement
 22. agreement. Defendants otherwise agree and further state that discovery is needed regarding the due
 23. diligence and viability of the proposals in the specific plan submitted by Plaintiff concerning the
 24. subject property, present mining operations and manufacturing plant operations and impact on the
 25. property of such operations, Plaintiff's plan to retake disturbed areas of the property, status of the
 26. access to the property across lands held by the United States and maintained by the Bureau of Land
 27. Management, efforts and status of Plaintiff securing a right-of-way to provide access to the
 28. property, status of environmental studies, plans and viability for access to all utilities and municipal

1 services to the property from Plaintiffs and from third parties and discovery and what Plaintiffs have
 2 done with respect to representations made to conduct studies on slope and gradient, current and
 3 future planned mining operations and impacts, surface hydrology, soils and geology, elevation, flora
 4 and fauna, access and historic roadways and infrastructure (existing and proposed).

5 B. The parties cannot agree on a completion date for discovery. Plaintiff contends that
 6 non-expert discovery can be completed by February 3, 2020. Defendants contend that non-expert
 7 discovery can be completed by July 6, 2020.

8 C. The parties agree that the maximum number of interrogatories by each party to any
 9 other party shall be seventy-five (75). Responses will be due thirty (30) days after service.

10 D. The parties agree that the maximum number of requests for admission by each party
 11 to any other party shall be seventy-five (75). Responses will be due thirty (30) days after service.

12 E. The parties agree that the maximum number of non-expert depositions by plaintiff
 13 shall be twenty (20) and the maximum number of non-expert depositions by defendant shall be
 14 twenty (20). Each non-expert deposition shall be limited to maximum of seven (7) hours unless
 15 extended by agreement of parties.

16 F. The parties agree that the reports from retained experts under Rule 26(a)(2) shall be
 17 due thirty (30) days after the completion date for discovery. Supplementation under Rule 26(e) are
 18 due within thirty (30) days after the exchange of initial reports.

19 4. **Jury Trial: Check one:**

20 A demand for a jury trial has not been made

21 A demand for a jury trial has been made pursuant to Fed. R. Civ. P. 38(b), and in conformity
 22 with LR 9015, but plaintiff does not consent to a jury trial pursuant to 28 U.S.C. § 157(e). An
 23 original and two (2) copies of all instructions requested by either party shall be submitted to the
 24 clerk for filing on or before ten (10) days before the start of trial. An original and two (2) copies of
 25 all suggested questions of the parties to be asked of the jury panel by the court on voir dire shall be
 26 submitted to the clerk for filing on or before ten (10) days before the start of trial.

1 5. **Other Items.**

2 A. The parties request a conference with the court before entry of the scheduling order.
 3 B. Plaintiff requests a pretrial conference in May 2020. Defendants request a pretrial
 4 conference in October 2020.

5 C. Plaintiff and Defendants should be allowed until thirty (30) days after the completion
 6 date for discovery to join additional parties or to amend their pleadings.

7 D. All potentially dispositive motions should be filed by sixty (60) days after the
 8 completion date for discovery.

9 E. Defendants contend settlement cannot be evaluated prior to January 1, 2020.

10 Plaintiffs would like to have Hon. Greg Zive as a potential settlement judge.

11 F. Final lists of witnesses and exhibits under Rule 26(a)(3) should be due: sixty (60)
 12 days after the completion date for discovery. Parties should have thirty (30) days after service of
 13 final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

14 G. Trial. Plaintiff contends the case should be ready for trial by June 2020 and at this
 15 time is expected to take approximately ten (10) days. Defendants contend the case should be ready
 16 for trial by November 2020 and agree with Plaintiff's estimate that it is expected to take
 17 approximately ten (10) days.

18 H. Pending Motions. There are two fully briefed matters pending including a motion to
 19 dismiss Defendant Clark County Board of Commissioners and a motion for partial judgment on the
 20 pleadings with respect to the claims made under the Equal Protection Clause and a separate claim
 21 pled under 42 U.S.C. Section 1983.

22 6. **Other matters**

23 A. At this time, the parties believe that discovery of electronically stored information
 24 should be made in native format. The parties agree to preserve such information.

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1 B. The parties agreed that any inadvertently produced privileged material would not
2 lose its privileged status, provided prompt disclosure of the existence of the inadvertently produced
3 privileged material is made.

4 Dated this 22 day of October 2019.

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